

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON STATE ADMINISTRATION**

**Call to Order:** By **VICE CHAIRMAN DEE L. BROWN**, on March 15, 2005  
at 8:00 A.M., in Room 455 Capitol.

#### **ROLL CALL**

##### **Members Present:**

Rep. Larry Jent, Chairman (D)  
Rep. Dee L. Brown, Vice Chairman (R)  
Rep. Joan Andersen (R)  
Rep. Mary Caferro (D)  
Rep. Sue Dickenson (D)  
Rep. Robin Hamilton (D)  
Rep. Gordon R. Hendrick (R)  
Rep. Teresa K. Henry (D)  
Rep. Hal Jacobson (D)  
Rep. William J. Jones (R)  
Rep. Gary MacLaren (R)  
Rep. Bruce Malcolm (R)  
Rep. Bernie Olson (R)

**Members Excused:** Rep. Veronica Small-Eastman, Vice Chairman (D)  
Rep. Emelie Eaton (D)  
Rep. Alan Olson (R)

**Members Absent:** None.

**Staff Present:** Marion Mood, Committee Secretary  
Sheri Heffelfinger, Legislative Branch

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

##### **Committee Business Summary:**

Hearing & Date Posted: SB 140, 3/3/2005; SB 81, 3/3/2005;  
SB 182, 3/11/2005;  
SB 118, 3/3/2005; SB 160, 3/3/2005  
Executive Action: SB 81; HB 752; SB 160

**HEARING ON SB 140****Opening Statement by Sponsor:**

**SEN. KELLY GEBHARDT (R), SD 23**, opened the hearing on **SB 140**, Create an intrastate mutual aid system for political subdivisions of the State. He stated passage of this bill would ensure that Homeland Security funds would remain available for emergencies.

**Proponents' Testimony:**

**Dan Lieberg, Deputy Administrator, Montana Disaster and Emergency Services Division (DES)**, stated that DES was responsible to the Governor for carrying out the planning for disaster and emergency services in the State. The Division was charged with the preservation of life and property and the protection of public health and safety. He advised that mutual aid agreements between political subdivisions was a critical element because it facilitated access to the proper resources in case of an emergency. **Mr. Lieberg** contended, since not all factions had mutual aid agreements in place, SB 140 was an attempt to fill the gaps and to provide a consistent mechanism throughout the State, including tribal jurisdictions. He pointed out that this bill was meant to augment, not replace, existing agreements, and was modeled after the 1999 National Emergency Management Assistance Compact, which allows states to share resources during national disasters or emergencies.

**John Semple, Montana Fire Alliance**, rose in support of SB 140, echoing previous testimony. Referring to Page 2, Lines 5 through 12, he stated the bill enhanced local mutual aid agreements.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**REP. GORDON HENDRICK, HD 14, SUPERIOR**, asked Mr. Lieberg whether this bill would change any of the emergency operation plans for local and county governments. **Mr. Lieberg** was certain that it did not, adding it gave them the opportunity to utilize surrounding counties' resources.

**REP. BERNIE OLSON, HD 10, LAKESIDE**, wanted to know the reason for the section which allowed an entity to withdraw from the agreement. **SEN. GEBHARDT** stated he did not want to make the agreements mandatory and added if they chose not to join, they would forego any Federal Homeland Security funds. As to REP. HENDRICK's question, he referred to Page 2, Lines 9 through 12,

where it stated mutual aid agreements did not affect current practice.

**REP. ROBIN HAMILTON, HD 92, MISSOULA**, asked Mr. Lieberg whether any of the Tribes had been involved in working on this bill. **Mr. Lieberg** advised they had been contacted for input as had other law enforcement agencies.

**REP. BRUCE MALCOLM, HD 61, EMIGRANT**, referred to Sections 3 through 5 and asked why there was no fiscal note; he wondered, since there was no fiscal impact to the State, whether there was a fiscal impact to local governments. **Mr. Lieberg** advised there was no fiscal impact to communities.

**REP. B. OLSON** inquired whether Section 12 of the bill was added in because of a problem with regards to granting immunity from liability; he thought passage of the bill would require a two-thirds majority vote. **Mr. Lieberg** advised this immunity language had been discussed with the Risk Management and Claims Division, and they had not objected to it.

**VICE CHAIR DEE BROWN, HD 3, HUNGRY HORSE**, interjected that immunity from liability issues did, indeed, require a two-thirds majority. **Mr. Lieberg** agreed, having misunderstood **REP. B. OLSON's** question; he added this requirement was stated in the bill.

**REP. JOAN ANDERSEN, HD 59, FROMBERG**, ascertained that communities who chose not to participate would forego receiving any Homeland Security funds; she asked whether those entities were currently receiving such funds. **SEN. GEBHARDT** confirmed this, adding that the State had received about \$40 million. **REP. ANDERSEN** hypothesized that a county would choose not to participate and wondered whether they would then lose their funding. **SEN. GEBHARDT** advised they would if they did not join by 2006 as stated in SB 140. **REP. ANDERSEN** asked whether the State would lose all of the Homeland Security funding if this bill did not pass, which **SEN. GEBHARDT** confirmed.

**REP. WILLIAM JONES, HD 9, BIGFORK**, asked whether these mutual aid agreements would require sparring fire departments in his district to work together. **Mr. Semple** replied they had to make this decision since the Federal money was on the line.

**VICE CHAIR BROWN** wondered if this targeted emergency services only or whether it could include participation by military affairs on the reservations, such as providing security during Powwows. **SEN. GEBHARDT** advised the bill allowed for mutual aid

agreements between Indian Nations and State entities; if the former chose to opt out, they could certainly do so.

**VICE CHAIR BROWN** deferred the question to **Major General Randy Mosley, Director, Department of Military Affairs; Adjutant General, Montana National Guard**, who stated this bill primarily set up mutual aid agreements between the Tribes and surrounding jurisdictions for emergencies; Powwows are not considered incidents of emergency or disaster, and he did not envision that these agreements would be used to support activities which would normally be monitored by other county agencies.

**VICE CHAIR BROWN** asked for assurance that the provisions of SB 140 were for emergency services only, which Maj. Gen. Mosley affirmed.

**Closing by Sponsor:**

**SEN. GEBHARDT** closed, adding REP. EVE FRANKLIN would carry SB 140 bill in the House.

*{Tape: 1; Side: A; Approx. Time Counter: 0 - 20.5}*

**HEARING ON SB 81**

**Opening Statement by Sponsor:**

**SEN. COREY STAPLETON (R), SD 27**, opened the hearing on **SB 81**, Revise National Guard Civil Relief Act. He advised SB 81 reduced the number of days a member of the National Guard may be on State active duty from thirty days to ten; since most active duty orders were for fifteen days or less, National Guardsmen had been unable to avail themselves of the Act's protection. He proceeded to review the bill's provision with the Committee.

**Proponents' Testimony:**

**Major General Randy Mosley** submitted written testimony. He stressed the importance of the Act as National Guardsmen were deployed all over the world and faced mobilization in the State upon their return home as the fire season approaches.

**EXHIBIT** (sth57a01)

**Roger Hagan, Montana National Guard Officer and Enlisted Association**, stood in support of SB 81. He recounted his work with SEN. STAPLETON and the Department of Military Affairs as they developed the National Guard Civil Relief Act, adding that this bill represented a correction which would make the Act more effective.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**VICE CHAIR BROWN** asked the Sponsor how many times the provisions in the Act had been used in the last two years. **SEN. STAPLETON** was not sure but stated it had been under-utilized because of the previous 30-day requirement. He asked to defer to **Lieutenant Colonel Jim Moran, Full-time Staff Advocate, Montana National Guard**, who advised it had never been used; he added this was the reason behind the change as the majority of the soldiers were on State active duty. He added that he did a lot of work on behalf of young soldiers who were finding themselves in difficulties with their landlords because of their deployment as most deployment came on very short notice.

**REP. MARY CAFERRO, HD 80, HELENA**, asked Lt. Col. Moran for an example of "relief." **Lt. Col. Moran** advised it could be a young hourly wage earner who depended on the steady paycheck to fulfill his rental obligations: if he was called on State active duty, he could go for weeks without a paycheck, depending on how pay periods fell. This might get him into trouble with his landlord, especially if the latter was looking for an excuse to make him leave. He closed by saying this would affect mostly young families who were living paycheck to paycheck. It would also allow a soldier to do his job without having to worry about legal actions back home.

**VICE CHAIR BROWN** wondered whether the change from thirty to ten days might allow for a certain irresponsibility. **Lt. Col. Moran** stated there were safeguards as the law required servicemen to apply for the protection, and it was up to the court's discretion whether they would step in or not.

**Closing by Sponsor:**

**SEN. STAPLETON** closed, adding that most of the problems faced by young soldiers were monetary in nature which would make it hard for them to focus on their military duties.

He stated **REP. ANDERSEN** would carry the bill on the House floor.  
**{Tape: 1; Side: A; Approx. Time Counter: 20.5 - 35.5. Comments: This tape is a 90-minute tape}**

(**REP. DICKENSON** joined the Committee at 8:40 A.M.)

**HEARING ON SB 182****Opening Statement by Sponsor:**

**SEN. KIM GILLAN (D)**, SD 24, opened the hearing on **SB 182**, Count absentee ballots cast by voters who die before election day. She stressed this bill would provide uniformity throughout the State as some election officials may not be notified in time of an elector's passing. **SEN. GILLAN** contended it would be doubly tragic if a serviceman was killed overseas after mailing his ballot, and it would therefore not be counted.

**Proponents' Testimony:**

**Bill Kennedy, Yellowstone County Commissioner**, rose in support of SB 182 as it provided uniformity in the State. He related several stories about people who had passed on before election day but after they had voted by absentee ballot. He felt the day the ballot was signed was election day for that voter and thus it should be counted.

*{Tape: 1; Side: B}*

**Duane Winslow, Yellowstone County Election Administrator**, stood in support of SB 182. He recounted that in the last election, over 18,000 absentee ballot were cast in his county alone. His staff did not have the ability to cross-index the ballots with hospital or mortuary records to determine whether or not they should be counted. After the election, the Billings Gazette determined that of the twenty-four ballots mailed out to people who passed away before election day, eleven had voted an absentee ballot but notification of the deaths had been timely for only three; subsequently, those three ballots were rejected. He added under current law, the remaining eight should have been rejected as well, contending had this happened in Lake County, it would have changed the outcome of the election.

**Elaine Graveley, Election Deputy, Secretary of State's Office**, stated it was important that all 56 counties followed the same procedure.

**Robert Throssell, Montana Association of Clerk and Recorders**, stood in support of SB 182 as it would standardize the process across the State.

**Boyce Fowler, AARP**, provided written testimony.

**EXHIBIT**(sth57a02)

**Brad Martin, Montana Democratic Party**, rose in support of SB 182, citing the compelling examples given in previous testimony.

**Harold Blattie, Montana Association of Counties (MACo)**, asked for the Committee's favorable consideration due to reasons given in previous testimony.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

There were no questions.

**Closing by Sponsor:**

**SEN. GILLAN** closed. She added that **REP. JIM KEANE** would carry the bill on the House floor.

**{Tape: 1; Side: B; Approx. Time Counter: 0 - 8.5}**

(VICE CHAIR BROWN announced that Committee would reconvene at 9:30 A.M. to accommodate **SEN. WHEAT**.)

(CHAIRMAN JENT entered at 9:40, and **REPS. JACOBSON, HENRY** and **HENDRICK** left.)

**EXECUTIVE ACTION ON SB 81**

**Motion:** **VICE CHAIR BROWN** moved that **SB 81 BE CONCURRED IN**.

**Discussion:**

**REP. SUE DICKENSON, HD 25, GREAT FALLS**, asked whether there had been any opponents to SB 81. **VICE CHAIR BROWN** explained there had been none and reviewed the bill for her.

**REP. ANDERSEN** added it would give them the opportunity to petition the courts for relief.

**REP. B. OLSON** agreed it would make things easier for our National Guard members in a time when their role was changing so rapidly.

**CHAIRMAN JENT** advised the Act has always served personnel on active duty; Montana's statute merely mirrors it. He added it was important to extend this kind of protection to the Guard.

**Vote:** Motion carried unanimously by voice vote; **REPS. HENDRICK, A. OLSON, JACOBSON, HENRY, SMALL-EASTMAN** and **EATON** voted aye by proxy.

**Motion/Vote:** REP. MALCOLM moved that SB 81 BE PLACED ON THE CONSENT CALENDAR. Motion carried unanimously by voice vote; REPS. HENDRICK, A. OLSON, JACOBSON, HENRY, SMALL-EASTMAN and EATON voted aye by proxy.

REP. ANDERSEN had agreed to be the House Sponsor.

**EXECUTIVE ACTION ON HB 752**

**Motion:** VICE CHAIR BROWN moved that HB 752 DO PASS.

**Discussion:**

**Ms. Heffelfinger** advised HB 752 needed significant coordination instructions with HB 671 and requested these be added in the Senate as HB 761 required amendments as well.

**CHAIRMAN JENT** reviewed the bill, stating it sought \$3.1 million in improvements for Information Technology in the judicial branch. The coordination with HB 671 was necessary as the money would be repaid over a six-year period, using a \$1 increase on lien filings.

(REP. HAMILTON left at 9:45 A.M.)

During the hearing, **VICE CHAIR BROWN** had asked Jim Oppedahl about the required FTEs for IT training and the millions of dollars in budgeting for these projects. According to her notes, it was \$2.2 million for FY 2006, \$2.6 million for 2007, \$1.3 million of one-time money, and \$3.1 million on a six-year basis. She referred to a statement made by REP. JACOBSON which questioned the length of the commitment, given the rapidly changing technological developments. She cited a State law which stated money cannot be extended for a period of time longer than it takes for the program to become obsolete. Considering the total cost of \$9.2 million and the concerns stated in the fiscal note, she stated she would not support the bill.

**REP. MALCOLM** referred to the "Green Sheets" and stated the IT expenditures for the Supreme Court were twice as high as those for all other State agencies.

**CHAIRMAN JENT** agreed and added according to Mr. Oppedahl, it was more costly to establish a case management system for the courts as there fewer of them. He advised such a system was critical because of the complex workload.

(REPS. HENRY and HENDRICK returned at 9:50 A.M.)



**VICE CHAIR BROWN** stated she could appreciate the need but as of today, the Legislature was \$120 million over the spending cap and it would behoove the Committee to vote against the bill instead of putting that burden on the Appropriations Committee.

**REP. DICKENSON** commented she saw the bill as ensuring timely hearings in court; IT would do away with the current information bottleneck. She stated she would support the bill, and related an incident where the County Attorney in Great Falls approached the DUI Task Force, asking them to buy a Powerpoint system for his courtroom as they could not afford to buy it. She added passing this bill was a small price to pay for justice.

**Vote:** Motion carried 9-7 by roll call vote with **REP. ANDERSEN, REP. BROWN, REP. CAFERRO, REP. HENDRICK, REP. JONES, and REP. MACLAREN** voting no; **REP. A. OLSON** voted no by proxy, and **REPS. SMALL-EASTMAN, EATON, HAMILTON and JACOBSON** voted aye by proxy.  
{Tape: 1; Side: B; Approx. Time Counter: 8.5 - 27.7}

#### HEARING ON SB 118

##### Opening Statement by Sponsor:

**SEN. MIKE WHEAT (D), SD 32**, opened the hearing on **SB 118**, Revise employment-related protection for National Guard. He stated this bill would establish fairness for both the National Guard and the Federal Reserves in Montana. **SEN. WHEAT** proceeded to review the bill with the Committee, and explained that Federal Reserves who are called up under Federal regulations were protected by the Federal Uniformed Services Employment and Re-employment Rights Act (USERA); SB 118 protected those servicemen who were called up under State active duty.

(REP. HENRY left at 10:05 A.M.; REP. JACOBSON returned at 10:10 A.M.; REP. EATON returned at 10:15 A.M.)

##### Proponents' Testimony:

**Major General Randy Mosley** provided written testimony.

**EXHIBIT**(sth57a03)

{Tape: 2; Side: A; Approx. Time Counter: 0 - 3.9}

**Roger Hagan**, stated that various groups had worked for more than twenty-four years on legislation to protect National Guard personnel; he lauded the Sponsor for bringing this bill which was the envy of forty states. He added this legislation would benefit employers as well as the process for State activation was similar to Federal activation. He made special mention of

Section 22, saying it provided eligibility for leave for any military duty and allowed for unused leave to be carried over.

**Pauline LaTray, Director, U.S. Department of Labor, Veterans' Employment & Training, Federal Investigator for USERA**, echoed previous testimony, stressing the need for conformity between State and Federal rules, especially in light of National Guard personnel being called to fires and other State emergencies. Problems arose with regard to investigations as they served under State rule and the USERA investigator had to apply Federal rule. She lauded SB 118 as the best re-write as it provided for investigative ability and redress.

**Ali Bovington, Attorney General's Office, Department of Justice**, lauded SB 118 as it provided important employment protection to the men and women serving in the National Guard.

**Bruce Spencer, Montana Automobile Dealers Association (MADA)**, rose in support of SB 118 and thanked both the Sponsor and Lt. Col. Moran for collaborating on some amendments requested by his Association.

**Opponents' Testimony:** None

*{Tape: 2; Side: A; Approx. Time Counter: 3.9 - 12}*

**Questions from Committee Members and Responses:**

**REP. B. OLSON** was concerned about a potentially extensive fire season and asked the Sponsor why there was no effective date.

**SEN. WHEAT** appreciated his concern and stated it could be made effective upon passage.

**REP. B. OLSON** referred to Page 4, Line 4, and asked for the reason for this provision. **SEN. WHEAT** asked to defer to **Lt. Col. Moran** who advised it mirrored Federal law. He explained that once a service member became qualified to participate under the State insurance plan, they could opt to keep their private health insurance; with the 102%, the employer was relieved of any financial burden as the 2% should cover any administrative expense.

**REP. B. OLSON** pursued the insurance issue, stating that according to language in the bill, there would not be any break in coverage if the service member switched from one plan to another. **Lt. Col. Moran** agreed.

**REP. B. OLSON** asked the Sponsor to explain the provisions regarding "liquidated damages" in Section 16. **SEN. WHEAT** advised those damages were generally determined in advance of the

violation; if the court found the violation was wilfull, it had the option of imposing an additional amount equal to the compensation that was paid for losses.

**VICE CHAIR BROWN** asked how many states currently had USERA. **Maj. Gen. Mosley** advised National Guard Reservists in all states were covered by the Federal USERA while on Federal status. Referring to Mr. Hagan's statement, he explained while many states were facing the expanded role of the usage of National Guard Reserves, they had state codes which were not necessarily up-to-date or conformed to Federal rule, and were looking to close the gap as Montana had with SB 118. **VICE CHAIR BROWN** wondered how many states had similar legislation. **Maj. Gen. Mosley** believed most states had some type of employment protection but realized it was inadequate, given the changing role of the Guard.

**VICE CHAIR BROWN** expressed concerns with the fiscal note regarding the leave of absence with pay provisions. She wondered if it was possible to "double-dip." **Maj. Gen. Mosley** advised it would not be as paid military leave was defined in statute. **VICE CHAIR BROWN** referred to the technical notes where it stated that Section 7 "inadvertently created an employer-employee relationship between the Department of Labor and any National Guard member called to active service" and asked him to address this issue. **Maj. Gen. Mosley** advised there would be a technical amendment to remedy this portion. **VICE CHAIR BROWN** referred to Page 2, Line 9, and asked whether this meant a teacher who was a Reservist would be required to work on a fire instead of in his classroom. **Lt. Col. Moran** advised that Guardsmen were subject to the Governor's orders; if problems arose, though, exceptions could be made, and the Guard would try to work with the personnel within their constraints.

**REP. DICKENSON** referred to the provision that an employer cannot discriminate against a person who *may* apply to the Guard and asked whether employers had indicated to the Sponsor that this was not fair to them, as employment could be seasonal and coincide with the fire season. She added it might put a burden on small business when they cannot rely on their workforce being there. **SEN. WHEAT** advised that Lines 20 through 28 on Page 4 spelled out the reasons why an employer did not have to rehire that Guard member. **REP. DICKENSON** surmised that an employer was prohibited from not hiring someone even if they have reason to believe he might join the Guard after having been hired; they did, however, have some leeway as far as bringing them back into the workplace. **SEN. WHEAT** agreed with her assessment.

**{Tape: 2; Side: B}**

**VICE CHAIR BROWN** ascertained that SB 118 only applied when a Guardsmen was called to State active duty and asked for examples of other duties besides firefighting. **SEN. WHEAT** stated it could be airport duty which was stepped up after 9/11, or natural disasters or emergencies.

**VICE CHAIR BROWN** asked **Maj. Gen. Mosley** whether he knew how many times there had been such calls to duty in the last ten years. **Maj. Gen. Mosley** advised the list was endless and depended on the Governor's orders; he recalled dropping hay to cattle by helicopter, surveying flood damage, lending support at the State's penal institutions, or conducting search and rescue missions for lost hunters or skiers. **VICE CHAIR BROWN** asked whether fighting fires would generally constitute a longer deployment than any others, which **Maj. Gen. Mosley** confirmed as far as it concerned the past. He added that depending on the War on Terror, future deployments could take longer for reasons of national security.

**Closing by Sponsor:**

**SEN. WHEAT** closed, adding that CHAIRMAN JENT would sponsor the bill in the House.

**{Tape: 2; Side: B; Approx. Time Counter: 0 - 4.8}**

**HEARING ON SB 160**

**Opening Statement by Sponsor:**

**SEN. MIKE WHEAT (D), SD 32**, opened the hearing on **SB 160**, Repeal legislative authority to assign holdover Senators. He stated it repealed a law which had been ruled unconstitutional and provided a copy of the relevant statute.

**EXHIBIT**(sth57a04)

**Proponents' Testimony:** None

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

There were no questions.

**Closing by Sponsor:**

**SEN. WHEAT** closed.

**{Tape: 2; Side: B; Approx. Time Counter: 4.8 - 7.4}**

EXECUTIVE ACTION ON SB 160

**Motion/Vote:** REP. BROWN moved that SB 160 BE CONCURRED IN.  
Motion carried unanimously by voice vote; REPS. A. OLSON, SMALL-EASTMAN and HENRY voted aye by proxy.

**Motion/Vote:** REP. HENDRICK moved that SB 160 BE PLACED ON THE CONSENT CALENDAR. Motion carried unanimously by voice vote; REPS. A. OLSON, SMALL-EASTMAN and HENRY voted aye by proxy.

REP. HENDRICK agreed to carry the bill on the House floor.

EXECUTIVE ACTION ON HB 632

**Motion:** REP. HENDRICK moved that HB 632 DO PASS.

**Motion:** REP. JENT moved that AMENDMENT HB063201.aem BE ADOPTED.  
[EXHIBIT](#)(sth57a05)

Discussion:

CHAIRMAN JENT provided a letter from the School Board Association which said they were in support of HB 632 as amended.  
[EXHIBIT](#)(sth57a06)

CHAIRMAN JENT explained the amendments.

VICE CHAIR BROWN asked whether the amendments took care of the technical concerns in the fiscal note. As Ms. Heffelfinger had not studied the amendments, VICE CHAIR BROWN asked, now that the Legislative Audit Committee was stricken and more authority was given to the school boards, whether they were required to report the audit's findings to the community and to show that the school was running more efficiently because of the audit; she was looking for a tangible "end-product" for the taxpayer to look at and was concerned it could change into closed-door sessions without any accountability.

CHAIRMAN JENT sensed that Committee was uncomfortable taking executive action on HB 632 without having further information.

Without objection, REP. HENDRICK withdrew his motion.

*{Tape: 2; Side: B; Approx. Time Counter: 7.4 - 15.5}*

**ADJOURNMENT**

Adjournment: 10:55 A.M.

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REP. LARRY JENT, Chairman

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MARION MOOD, Secretary

LJ/mm

Additional Exhibits:

**EXHIBIT ([sth57aad0.PDF](#))**